88-282

No. ———

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

WILLIAM ALTER, UNITY VENTURES, and
LASALLE NATIONAL BANK,
Petitioners,

v.

EDWIN M. SCHROEDER, NORMAN C. GEARY,
GEORGE BELL, VILLAGE OF GRAYSLAKE,
and COUNTY OF LAKE,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

JOHN G. KESTER *
DOUGLAS R. MARVIN
WILLIAMS & CONNOLLY
Hill Building
Washington, D.C. 20006
(202) 331-5000
Attorneys for Petitioners

Of Counsel:
JAMES P. CHAPMAN
ALAN MILLS
JAMES P. CHAPMAN AND
ASSOCIATES, LTD.
Suite 930
33 North Dearborn Street
Chicago, Illinois 60602

* Counsel of Record

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

QUESTIONS PRESENTED

1. Do Article III and this Court's holding in *Williamson County Regional Planning Comm'n* v. *Hamilton Bank*, 473 U.S. 172 (1985)—which required a formal final decision by state officials and pursuit of state remedial procedures before just compensation for a "taking" could be sought in federal court—impose the same "ripeness" requirement on Civil Rights Act suits under 42 U.S.C. § 1983 that do not claim any "taking," but rather seek damages from past denials of equal protection of the laws and due process of law?

2. Should the *Williamson* "ripeness" requirement be further extended, in spite of this Court's decision in *Patrick* v. *Burget*, 108 S.Ct. 1658 (1988), to require a formal official ruling before suits for damages from conspiracies to restrain trade may be brought against municipalities or officials under the Sherman Act, 15 U.S.C. § 1?

3. Does *Williamson* require exhaustion of reconsideration procedures when no prescribed procedures exist?

Pursuant to Rule 28.1, petitioners state that LaSalle National Bank is a federally chartered banking corporation acting here solely as trustee of Illinois Land Trust No. 103331, of which petitioner Alter and his children as partners are sole beneficiaries. LaSalle National Bank has no other interest in the case.

TABLE OF CONTENTS

TABLE OF CONTENTS—Continued

TABLE OF AUTHORITIES

Cases: Page

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

No. ———

WILLIAM ALTER, UNITY VENTURES, and LASALLE NATIONAL BANK,

Petitioners,

v.

EDWIN M. SCHROEDER, NORMAN C. GEARY, GEORGE BELL, VILLAGE OF GRAYSLAKE, and COUNTY OF LAKE,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit entered in this case on March 11, 1988.

OPINIONS BELOW

The opinion of the United States Magistrate recommending denial of respondents' motion to dismiss for lack of ripeness is unreported, and is at Appendix B, A. 18a.[1] The order of the United States District Court for the Northern District of Illinois adopting the Magis-

---

[1] Citations to "A." are to the Appendix accompanying this petition. Citations to "T." are to the trial transcript and to "Ex." to trial exhibits; to "Br. Ct. App." to respondents' brief in the Court of Appeals; and to "Def. Mem." to Defendants' Memorandum in Support of Their Rule 50(b) and 59(a) Motions.

trate's opinion and denying the same motion also is unreported, and is at Appendix C, A. 40a. The order of the same court denying reconsideration of that order is at Appendix D, A. 41a. The opinion of the District Court entering judgment notwithstanding the jury's verdict is reported at 631 F. Supp. 181 and is at Appendix E, A. 42a; its opinion and order dismissing the procedural due process claim is unreported and is at Appendix F, A. 92a. The opinion of the United States Court of Appeals for the Seventh Circuit is reported at 841 F.2d 770 and is at Appendix A, A. 1a. The judgment of the Court of Appeals is at Appendix G, A. 94a. The order of the Court of Appeals denying petitioner's petition for rehearing is at Appendix H, A. 96a.

JURISDICTION

The judgment of the United States District Court for the Northern District of Illinois was entered March 19, 1986. A timely notice of appeal was filed on April 15, 1986. The judgment of the United States Court of Appeals for the Seventh Circuit was entered March 11, 1988, and a timely petition for rehearing was denied May 5, 1988. On July 28, 1988, Justice Stevens entered an order extending the time for filing of this petition to and including August 15, 1988. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTES INVOLVED

Section 1 of the Civil Rights Act of 1871, Rev. Stat. § 1979, as amended, 42 U.S.C. § 1983, provides in relevant part:

> "Civil action for deprivation of rights
>
> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof

> to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . . ."

Section 1 of the Sherman Antitrust Act, 26 Stat. 209, as amended, 15 U.S.C. § 1, provides in relevant part:

> "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal . . . ."

STATEMENT

Petitioner William Alter,[2] a successful developer of low- and moderate-cost housing and light industrial projects in Cook County (Chicago), Illinois, brought this action under the Civil Rights Act, 42 U.S.C. § 1983, and section 1 of the Sherman Act, 15 U.S.C. § 1, against three municipal and county officials,[3] the incorporated Village of Grayslake, and Lake County, Illinois, a prosperous suburban area lying immediately to the north of Chicago along the shore of Lake Michigan. His complaint alleged that respondents had conspired and acted in several ways unlawfully to block his development of land in Lake County for light industry and moderate-cost housing, and in so doing damaged him by denials of equal protection, procedural and substantive due process, and by violation of the Sherman Act. A jury found in his favor, awarding trebled damages of $28,500,000. However, the trial court set aside the award and entered judgment notwithstanding the verdict.

---

[2] The other two petitioners are Alter's partnership with his children, and a bank which is nominal trustee of an Illinois land trust for the benefit of the partnership. All are collectively referred to herein as "petitioner."

[3] At the pertinent times, respondent Schroeder was the Mayor of Grayslake and President of its Board of Trustees, and respondents Geary and Bell were members of the Lake County Board and successively Chairmen of its Public Service Committee.

On appeal, the Seventh Circuit did not review that ruling, but instead affirmed on a ground that had been rejected by the District Court prior to trial and in findings after: the Court of Appeals held that petitioner's equal protection, due process and antitrust claims were never "ripe," because it said he had not received the kind of "formal" and "final" governmental decision, A. 10a, and had not exhausted reconsideration procedures, as would be required in a suit for just compensation on a "taking" claim. The Court of Appeals ruled that although he had been officially "rebuffed" and told orally and in writing that sewer access essential for development of his property was denied—and even though no prescribed procedure for a private developer to seek a sewer connection or review its denial existed—his civil rights and antitrust claims should have been dismissed as constitutionally "unripe" by the District Court.

A. The Facts at Trial.

The complaint alleged that respondents in various ways had conspired to block petitioner from access to any facility to treat sewage, in order to keep him from exercising a federally protected right to put up moderate-cost housing on a 585-acre open tract on which he acquired an option in 1972 and title in 1976. Respondents did so, according to the complaint, "to control the market for new residential, commercial, and light industrial development in their own parochial interests and unreasonably to restrain competition to the specific damage of" petitioner, who was an outsider seeking to serve a different socioeconomic market. Respondents later told the jury:

> "Why hasn't Mr. Alter been able to develop his property the way he wanted to? The evidence will be that he had never done business in Lake County before. He was familiar and comfortable with Cook County . . . ." Tr. 67.

The Village of Grayslake, lying just north of the tract purchased by petitioner, was a Lake County municipality of middle- to high-income families ranking among the most affluent in the Chicago metropolitan area. Its respondent mayor admittedly stated that he thought the County "could not afford" large numbers of "housing units, all being low or middle income bracket," which "would lend itself to nothing more than development of a shanty town." T. 608-09. By contrast, the nearby Village of Round Lake Park, which agreed to and did annex petitioner's land, was a blue-collar community with high unemployment, minimal commercial and industrial opportunities, and a short supply of affordable housing. Round Lake Park wanted "moderate, low-income type housing . . . in the blue collar area . . . smaller homes that would be within the reach of the younger people in the area." T. 441-42. Respondents, on the other hand, were concerned about what they called "one of Grayslake's vexing problems—Round Lake Park's irresponsible and indiscriminate zoning policies." Br. Ct. App. 43.

Petitioner undertook expenditures in excess of four million dollars to prepare his tract, called "Unity Development," for light industrial, commercial and moderate-cost housing. He obtained from Round Lake Park all the necessary zoning.

To complete development of the property, it was essential to provide for sewage disposal. Petitioner contacted the County Public Works Department, which administered sewer connections, and was told that his tract lay in the service area eligible to connect to a major new partially-federally-funded sewer line called the Northeast Central Interceptor, that collected from a large area of the County, including petitioner's property, to a central treatment plant. A. 44a. The County officials also informed him that the application to them for such a sewer connection should come from his municipality—the Village of Round Lake Park—rather than from the private developer himself.

In 1978, Round Lake Park on behalf of petitioner submitted to the County Public Works Department a formal request, with supporting engineering drawings, to connect petitioner's proposed development to the Northeast Central Interceptor. "Martin Galantha, Director of the Lake County Public Works Department, approved the plans . . . ." A. 5a, 46a. Under normal practice, no further County approval was required. But then, without petitioner's or Round Lake Park's knowledge, Galantha "sent them on to Mayor Edwin M. Schroeder for Grayslake's approval according to the sphere of influence agreement." *Ibid.* Without explaining why, Galantha told petitioner he should make an appointment to see respondent Schroeder, the Mayor of Grayslake. T. 754.

The meeting was brief. Respondent Schroeder, in a "heated discussion," T. 1516, informed petitioner and the Mayor of Round Lake Park for the first time that Grayslake had a previously undisclosed "sphere of influence" agreement, by which the County had granted Grayslake an extraterritorial veto power over connections to the Interceptor. Schroeder further explained that four months before petitioner completed annexation negotiations with Round Lake Park, Grayslake had persuaded the County to amend the agreement's coverage to (1) add petitioner's land, and (2) grant Grayslake veto power even over connections that were inside other municipalities. A. 19a-20a, 45a. The veto power was absolute and not subject to any prescribed standards. T. 122. No previous agreement had granted one municipality jurisdiction to block development inside the boundaries of another. The purpose, respondents admitted, was to empower Grayslake to use sewer service as a way to control development outside its borders. A. 76a; T. 206.[4]

---

[4] Later all the Grayslake Trustees signed a letter explaining that "Control of the area immediately outside its boundaries is a matter of great concern to the residents of Grayslake. Without some semblance of control Grayslake could be completely surrounded by

Respondent Schroeder announced to petitioner that Grayslake had decided to exercise its authority under the agreement, and declined to consent to the sewer connection for petitioner's property. A. 46a. The mayor stated that he "acted with the authority of the village" and with the Board's "approval and knowledge" was announcing a decision by the Grayslake Board of Trustees, Grayslake's governing body. T. 273, 1481. The mayor said that not only would permission not be granted "at that time," but that "there is no use talking" and "he didn't know at what time" Grayslake would "even consider" allowing petitioner's connection. T. 753. The mayor "kept pounding on the table, and said, 'I'm going to determine who goes into that sewer.' " T. 752.

Round Lake Park appealed the denial to the Lake County Board, which referred it to the Board's Public Service Committee. A. 5a. Outside counsel for the Board then rendered an opinion that the unique extraterritorial veto power the County had conferred on Grayslake appeared to be illegal because "the Agreement vests the Village with entirely arbitrary authority and therefore could be held void, in whole or in part, should its legality be challenged," and also "may constitute a violation of the federal antitrust laws." Pl. Ex. 113. The Committee prepared to refer the matter to the State's Attorney; but after the individual respondents all objected to its doing so, A. 46a-47a, finally "the Committee abandoned further inquiry into the legality of Grayslake's veto power and instructed the County to take the necessary steps to support the contract's validity." A. 6a. Round Lake Park considered bringing a lawsuit to challenge the denial of the sewer connection, but because of lack of funds, and because petitioner was considering a different solution, decided not to do so. T. 490-91.

---

other municipalities who do not have the same concern with developments . . . . It is not in Grayslake's interest to allow connections which may preclude some desirable annexation to Grayslake . . . ." Pl. Ex. 111.

Petitioner at that point did not sue, either. Instead, he set about attempting an alternative plan, which was to forgo the sewer connection and instead to construct a small self-contained sewage treatment plant to service his own property. He received approval from Round Lake Park, which in November 1979 obtained an effluent variance from the Illinois Pollution Control Board to permit such a plant, and which in December 1979 signed a contract to have it constructed. A. 47a. But respondents filed objections with the Illinois Environmental Protection Agency, the other necessary approval authority, A. 6a; there was evidence at trial that these objections, which succeeded in blocking approval for the alternative plant, had no relation to environmental concerns, but rather were pressed in bad faith and again designed simply to prevent petitioner from developing his property for the moderate-cost housing that Grayslake did not want.

In 1980, a potential developer of other nearby land, whom the Grayslake Trustees considered an even less desirable neighbor than petitioner, proposed to annex that land to Round Lake Park. Thereupon the Grayslake Trustees passed a formal resolution that "the Village of Grayslake agrees to the connection of the [petitioner's] Unity Ventures Development . . . to the County Interceptor"—provided Round Lake Park would agree to grant Grayslake a veto on the other annexation. A. 47a, 85a. The respondent Mayor of Grayslake, saying that Grayslake wanted to avoid "a shanty town," abruptly telephoned to ask petitioner to persuade Round Lake Park to agree to Grayslake's proposal; he assured petitioner that "the minute the proposal was signed that they would let Alter connect right away to the interceptor." T. 617. The Grayslake mayor "stated that he realized our sewer problems and the predicament that we were in." T. 611. But Round Lake Park annexed the new land, and the

Grayslake Trustees then promptly passed a formal resolution rescinding their conditional offer to consent to petitioner's sewer connection.

Later, as part of the same concerted effort, Grayslake allegedly in bad faith brought a lengthy but unsuccessful [5] suit in an Illinois state court to try to take away the zoning petitioner had obtained six years before.

Throughout the 1978-81 period, Grayslake granted authorizations to developers of several other nearby tracts (which had agreed to be annexed by Grayslake) allowing them to connect to the Northeast Central Interceptor sewer line. T. 304-308. The Grayslake mayor testified that "Any annexation that we took in, there was an understanding you could use the sewer if it's available." T. 306. The Grayslake Trustees stated in writing that they exercised the veto in such a way "that the interests of Grayslake should prevail!" Pl. Ex. 111 (exclamation in original). At all times the Northeast Central Interceptor and its treatment plant had sufficient capacity for petitioner's planned development. T. 365.

By 1981, respondents had succeeded in blocking petitioner's access to the Northeast Central Interceptor for nearly four years, and also in blocking his attempt to construct a self-contained treatment plant. His favorable financing arrangements expired. He filed this suit for damages alleging that respondents by blocking his development through "a series of wrongful acts," A. 43a, had violated the Civil Rights Act by acting under color of law to deny him constitutional guarantees of equal protection and procedural and substantive due process, and

---

[5] The trial court in that case ultimately granted judgment on the pleadings for petitioner, and the appellate court affirmed. *People ex rel. Foreman* v. *Village of Round Lake Park*, 1988 Ill. App. 3d Lexis 496 (1988).

also had violated the Sherman Antitrust Act. He did not make any allegation that his property had been "taken."

B. The District Court's Ripeness Ruling.

Prior to trial, respondents moved to dismiss on the ground that the case was not "ripe." The District Court denied the motion, adopting in full the opinion of the United States Magistrate to whom it had been referred, A. 40a, that for sewer connections in Illinois "there is no requirement of a particular formalized application process," A. 25a, and

> "That Alter submitted proposals to the County, and that the County referred them to Grayslake and thereafter declined action based on the reported veto by Grayslake, support the conclusion that a request had been made and denied and that any more formal application would have been futile." A. 25a.

The opinion continued:

> "Even a decision favorable to Alter there would not vindicate his claims here. Alter claims that Grayslake and the County violated his civil rights. The acts complained of have already occurred, and future events would not add significantly to the operative facts necessary for adjudication of the dispute." A. 26a.

Respondents' motion for reconsideration was denied. A. 41a. The District Court made post-trial findings that "[i]n the present case, there was a refusal by Grayslake," and that petitioner had suffered "the denial of sewer hook-up." A. 84a, 93a.

C. The Jury Verdict.

Petitioner presented evidence at trial that his federally protected rights had been violated over a period of four years in at least six ways:

> —By the County's granting the Village of Grayslake an absolute, standardless veto over sewer con-

nections, and in 1976 extending that veto power to apply to property of petitioner that lay inside another municipality.

—By Grayslake's vetoing that connection for no legitimate purpose, but rather to sabotage his development plans, at the same time it was granting approvals to other developers.

—By the County's supporting Grayslake's veto in the face of its own counsel's advice that the veto power was illegal.

—By Grayslake's then filing objections in bad faith to state officials to block construction of a self-contained sewage treatment plant on his own land.

—By Grayslake's later offering, in 1980, to withdraw the veto and approve his sewer connection immediately—provided he could prevail on the Village of Round Lake Park to block another developer—and by then formally rescinding the approval offer.

—By Grayslake's filing in bad faith and forcing him to defend an unsuccessful lawsuit to take away the zoning he had been granted in 1976.

The jury found in petitioner's favor on both the Civil Rights Act and antitrust claims. Based on expert testimony it found that he had incurred damages of $9,500,000, which were trebled pursuant to the Clayton Act, 15 U.S.C. § 15, to $28,500,000.

The verdict was one of the largest ever returned in cases involving actions by officials to block low-cost housing development, and it received national attention.[6] Lake

---

[6] See generally Lee, *The Political Safeguards of Federalism? Congressional Responses to Supreme Court Decisions on State and Local Liability*, 20 URBAN LAW. 301, 313, 318-20 (1988). Another commentator observed about this case:

> "This stunning jury verdict against local governments (and three of the named officials) brings panic to the hearts of local officials everywhere. The case, however, is the most extreme example of a 'sewer as leverage' case that one can imagine. Grayslake not only vetoed the application for sewer service

County and Grayslake widely proclaimed that they would be bankrupted if forced to pay, and respondents asked Congress to change the law retroactively to negate petitioner's verdict.[7] Congress declined to do so.[8]

However, after Congress let the jury's verdict stand, and more than two years after the verdict had been rendered, the District Court entered judgment notwithstanding the verdict. It held that petitioner could prevail only if there was "no evidence" of any legitimate governmental purpose. A. 75a. Brushing aside what it called "the slight overbreadth of Grayslake's sphere of influence," A. 80, the District Court held that it believed respondents' testimony that all the officials' actions and motivations had been for the public good, that state-action antitrust immunity should apply, and also that the officials were immune on other claims. It also dismissed petitioner's claim that he had been denied procedural due process, holding that "the procedures used to deny the Unity

---

from a system that it did not either own or operate, but it sued to block the development of an alternative system. In short, Grayslake, Lake County, and some of their public officials appeared to have gone to a great deal of trouble to use the sewer system as leverage to implement some sort of a regional no-growth policy. It is an extreme case, which explains the extreme remedy."

Kelly, *Piping Growth: The Law, Economics and Equity of Sewer and Water Connection Policies*, 36 LAND USE LAW & ZONING DIGEST 3, 6 (July 1984).

[7] "[T]he Illinois delegation sought to invalidate the $28.5 million judgment against the Village of Grayslake, Lake County, and municipal officials." Lee, *supra* n. 6, at 318 (footnote omitted); see also *id.* at 313 n.69. "Congressman Crane, who represents the district in which *Unity Ventures* is pending on appeal, stated during the House debates that this judgment, if upheld on appeal, could very well bankrupt Lake County." *Jefferson Disposal Co.* v. *Parish of Jefferson*, 603 F. Supp. 1125, 1130 n.7 (E.D. La. 1985); H.R. Rep. No. 98-965, 98th Cong., 2d Sess. at 10-11 (1984).

[8] See Lee, *supra* n. 6, at 320.

property's sewer hook-up were not fundamentally unfair." A. 93a. Petitioner appealed.

D. The Court of Appeals' Decision.

The Seventh Circuit (Wood, J., with whom Cummings and Eschbach, JJ., concurred) affirmed without considering the propriety of the District Court's reasoning that set aside the jury verdict. Instead, citing this Court's decision in *Williamson County Regional Planning Comm'n* v. *Hamilton Bank*, 473 U.S. 172 (1985), the Court of Appeals held that petitioner's claims never became "ripe" under Article III.

The Court of Appeals observed that *Williamson* requires a "final" and "formal" ruling before a "taking" claim for just compensation can be brought. A. 10a. It then held that such a requirement applies with equal force to § 1983 tort claims for denials of equal protection of the laws, procedural due process, and substantive due process. The Court of Appeals decided that petitioner had never obtained a decision sufficiently "final" to satisfy Article III—even though the District Court had found that petitioner had been denied a sewer connection, A. 84a, 93a, and the jury on a specific instruction had considered and rejected respondents' defense that petitioner had "never properly sought sewer services," T. 2383-84. Focusing on the initial veto of a connection by Grayslake, and without discussing the rest of the "series of wrongful acts," A. 43a, the Court of Appeals said that petitioner should have taken more steps at the beginning, ten years previously, to obtain sewer access, and that "[a]t the very least, Alter should have sought formal approval of his request for a sewer connection from the Grayslake Board of Trustees," A. 12a—whose actions were what petitioner was complaining of, and which had turned him down twice in writing, once by formal resolution, and once through its Mayor orally. The Court of Appeals so held even though Illinois law sets no procedure

for either applying for or challenging the refusal to grant a sewer connection. A. 25a.[9]

As for the Sherman Act conspiracy verdict, the Court of Appeals simply noted:

> "Our discussion of ripeness in connection with the plaintiffs' equal protection and due process claims applies equally to their antitrust claim." A. 13a.

The only authority it cited was a Third Circuit case which, the Court of Appeals acknowledged, passed over the point "without discussion." A. 13a.[10] Rehearing was denied. A. 96a.

REASONS FOR GRANTING THE WRIT

This case presents a recurrent and fundamental question that this Court specifically left undecided in *Williamson County Regional Planning Comm'n* v. *Hamilton Bank*, 473 U.S. 172, 182 n.4 (1985), and as to which the Circuits are divided: whether a § 1983 Civil Rights Act plaintiff who is not claiming a "taking" of property must obtain the same formal rulings as in a "taking" case before Article III allows suit for damages from past denials of equal protection and due process. One other Circuit besides the Seventh here extends *Williamson* to equal protection and due process claims; at least four other courts of appeals, plus district courts in three other

---

[9] The Court of Appeals also said that petitioner in addition should have sought a connection to a more distant sewer line servicing another part of the County, the Northwest Interceptor, which undisputed testimony had established would have violated state and federal area assignments and would have been vastly more expensive. A. 12a.

[10] *Suburban Trails, Inc.* v. *New Jersey Transit Corp.*, 800 F.2d 361, 368 (3d Cir. 1986). The Seventh Circuit of course did not discuss this Court's subsequent holding in *Patrick* v. *Burget*, 108 S. Ct. 1658 (1988). See p. 27, *infra*. In dictum the court added that it would have held the antitrust claim barred by state-action immunity. A. 16a.

Circuits, do not.[11] The Court of Appeals here has also ignored several subsequent decisions of this Court that explicitly distinguish *Williamson* and strongly suggest that the *Williamson* requirements applicable to "taking" cases do not govern other civil rights claims. *E.g.*, *First English Evangelical Lutheran Church* v. *County of Los Angeles*, 107 S.Ct. 2378 (1987).

In addition—contrary to this Court's holdings that § 1983 does not require civil rights plaintiffs to exhaust state remedies, *e.g.*, *Felder* v. *Casey*, 108 S.Ct. 2302 (1988), and *Patsy* v. *Board of Regents*, 457 U.S. 496 (1982)—this case creates a further conflict as to whether, in a case where no prescribed state review procedures exist, § 1983 plaintiffs from now on must invent and then exhaust reconsideration procedures before coming to federal court. The Seventh Circuit here says, yes; the Second and Ninth clearly say, no.

Finally, after the Seventh Circuit's decision, this Court decided *Patrick* v. *Burget*, 108 S. Ct. 1658 (1988), establishing that, in light of the fact that the Sherman Act punishes the act of conspiring to restrain trade, no official decision at all is required before suit under that statute may be brought. The Seventh Circuit here decided that, to the contrary, Article III "ripeness" requirements of "formal" and "final" rulings borrowed from "taking" cases now also bar Sherman Act actions for conspiracies —presumably including not just civil treble-damage suits, but Sherman Act criminal prosecutions as well. That holding is so broad in its scope and so clearly at odds with this Court's subsequent one that summary remand is appropriate.

---

[11] One other district court has commented that "*Williamson* is or may be a puzzle to me," *HMK Corp.* v. *County of Chesterfield*, 616 F. Supp. 667, 671 (E.D. Va. 1985), and another that "I note that I am not the first judge to have difficulty applying the *Williamson County* doctrine." *Kaiser Dev. Co.* v. *City and County of Honolulu*, 649 F. Supp. 926, 941 n.18 (D. Haw. 1986).

I. THE SEVENTH CIRCUIT'S RESTRICTION ON CIVIL RIGHTS ACT SUITS CONFLICTS WITH DECISIONS OF THE SECOND, THIRD, EIGHTH, AND NINTH CIRCUITS, AND DISTRICT COURT HOLDINGS IN THE FIRST, TENTH, AND ELEVENTH.

A. There Is a Conflict as to Whether *Williamson*'s Requirements Apply to Non-"Taking" § 1983 Cases.

The conflict in the Circuits that has been widened [12] by the Seventh Circuit's interpretation of *Williamson* as applied to 42 U.S.C. § 1983 could not be clearer. Where there is proof that local officials have inflicted damage by any of a variety of actions that denied equal protection or due process—and a long series of such concerted actions was demonstrated here—then other Circuits routinely recognize that damage has occurred and grant a remedy under § 1983, regardless of what later procedures or ultimate rulings might follow. For example:

—Five months ago, in a case where a property-owner sued under § 1983 for damages from city officials who he alleged had denied him due process by withholding a zoning exemption, the Third Circuit held that "a ripe controversy exists" even though the denial itself was not final, and indeed when the officials subsequently changed their minds and actually *granted* the exemption. *Neiderhiser* v. *Borough of Berwick*, 840 F.2d 213, 217 (3d Cir.

---

[12] Another Circuit, the Sixth, in an unpublished opinion reversing a district court, has without discussion taken the same view as the Seventh here, that *Williamson* applies to all § 1983 claims across the board, not just to "taking" cases. *Weaver* v. *Anderson County Fiscal Court*, noted 838 F.2d 1216 (6th Cir. 1988), op. not for pub. at 1988 U.S. App. Lexis 1768, *reversing* 648 F. Supp. 1575, 1579 n.3 (E.D. Ky. 1986). The Seventh Circuit relied on language in a Ninth Circuit case as support; however, the Ninth Circuit's analysis and holding there are directly in conflict with the Seventh Circuit's here. See pp. 20-21, *infra*.

1988), *pet'n for cert. pending*, No. 87-1969. The Third Circuit explained

> "that Hollywood has stated a cause of action for violation of its due process and free expression rights under section 1983, and that its claim for damages flowing therefrom demonstrates that a live case or controversy exists. It does not matter that the Board has since reversed itself and granted the zoning exemption; if Hollywood's allegations are true and the denial deprived Hollywood of any constitutional right, even temporarily, the denial would be compensable . . . ." *Id.* at 218-19 (footnote omitted).

And in another recent Third Circuit case, *Bello* v. *Walker*, 840 F.2d 1124 (3d Cir. 1988), *pet'n for cert. pending*, No. 87-1968, that court held that even though a developer later succeeded in obtaining the building permit he sought, his § 1983 due process claim would still be heard based on allegations "that certain council members, acting in their capacity as officers of the municipality improperly interfered with the process." 840 F.2d at 1129.

—In two decisions the Eighth Circuit also has rejected the conclusion of the Court of Appeals here that the "ripeness" rule that *Williamson* applied to "taking" claims should be extended to due process and equal protection claims as well. In *Mitchell* v. *Mills County*, 847 F.2d 486 (8th Cir. 1988), property owners sued under § 1983 claiming that county officials had both taken their property and damaged them by denials of due process of law. The Court of Appeals recognized "the takings claim . . . as not yet ripe" under this Court's holding in *Williamson*, *supra*, but then went on to adjudicate the due process claim on the merits. 847 F.2d at 488. And in *Littlefield* v. *City of Afton*, 785 F.2d 596 (8th Cir. 1986), the same Court of Appeals again dismissed a "taking" claim as premature under *Williamson*, but held that a § 1983 substantive due process claim based on the

same facts was ripe and should be heard. *Compare* 785 F.2d at 607 *with id.* at 609.

—Whether the *Williamson* "ripeness" requirements should apply to non-"taking" cases also was recently before a district court in a land development case in the Tenth Circuit, which held:

> "Defendants are correct that plaintiff's land has not been condemned. However, their argument that plaintiff's claims are not ripe because the land has not been condemned is without merit . . . . [*D*]*efendants have neglected plaintiff's claims for due process violations which have already occurred.* . . . [P]laintiff has asserted claims based on actions which defendants have allegedly already taken and which purportedly violated plaintiff's rights. Accordingly, defendants' motion to dismiss for lack of jurisdiction, on the ground that plaintiff's claims are not ripe, is denied."

Oberndorf v. *City and County of Denver*, 653 F. Supp. 304, 311 (D. Colo. 1986) (emphasis supplied), *quoting Upah* v. *Thornton Development Authority*, 632 F. Supp. 1279, 1280-81 (D. Colo. 1986). The same conclusion has been reached by district courts in the First and Eleventh Circuits, which have dismissed "taking" claims as unripe under *Williamson* while proceeding to adjudicate § 1983 substantive due process claims. *Lerman* v. *City of Portland*, 675 F. Supp. 11, 15, 17, 19 (D. Me. 1987); *Carroll* v. *City of Prattville*, 653 F. Supp. 933, 942-44 (M.D. Ala. 1987).[13]

It has never been the law under the Civil Rights Act that damages already sustained from an equal protection or due process violation, committed by officials acting under color of state law—the violations alleged and found by the jury under proper instructions here—can be erased by subsequent applications or events. Even if petitioner

---

[13] The same recognition that § 1983 suits for due process violations are actionable, even when compensation claims for a "taking"

had done what the Seventh Circuit ten years later said he should have, and had "sought formal approval of his request from the Grayslake Board of Trustees," the very body of whose actions he was complaining; and even if he had somehow finally obtained it—even then, petitioner still would have incurred substantial damage as a result not just of the initial veto, but of the whole series of actions by respondents that the jury found had denied him equal protection of the laws and due process. Courts in at least five Circuits would have allowed him in federal court.

B. There Is a Conflict as to Whether *Williamson* Requires Pursuit of Non-Existent Remedies.

Williamson involved familiar and well-defined zoning procedures, of which variances are an integral part. By contrast, in Illinois there is no formal procedure for obtaining a connection to a public sewer; normally application is made by the municipality to the Public Works Department, as was done (and initially approved) here. A. 5a, 46a. Illinois law provides no administrative review procedure if a sewer connection is not granted. *LaSalle Nat'l Bank* v. *County of Lake*, 579 F. Supp. 8, 10 (N.D. Ill. 1984).

Nevertheless, the Seventh Circuit here held that even though every member of the governing body of Grayslake in writing and orally through the mayor declined in 1978 and 1979 to allow a sewer connection (a position they temporarily offered to change and then later reiterated in 1980), petitioner's claim was not ripe because he should have tried personally in 1978 to persuade them or the Lake County Board to change their minds. Other Circuits, following this Court, hold entirely to the contrary:

---

are not, is in pre-*Williamson* decisions of the Fourth and Fifth Circuits. *Suthoff* v. *Yazoo County Indus. Dev. Corp.*, 637 F.2d 337, 340 (5th Cir. 1981), *cert. denied*, 454 U.S. 1157 (1982) (due process claim survives when "taking" procedures "instituted but abandoned"); *Scott* v. *Greenville County*, 716 F.2d 1409 (4th Cir. 1983).

—In a Second Circuit case remarkably parallel to the present one, *Sullivan* v. *Town of Salem*, 805 F.2d 81 (2d Cir. 1986), a developer brought a § 1983 action for damages for denial of due process based on the failure of town officials to issue an occupancy permit:

> "When Sullivan orally requested certificates of occupancy for his completed houses, he was told both by the building official and by the first selectman that the town would issue no certificates of occupancy for Sullivan's new houses until the roads had been accepted for dedication." 805 F.2d at 85.

Even though "it was within Sullivan's power under Connecticut law to convene a town meeting to consider the question of acceptance," *id.* at 84, and even though he never did so—and even though the occupancy certificates *later were granted*—the Second Circuit held that "it is apparent that triable issues were raised," *id.* at 85, for damages resulting from delay, added taxes, interest and other expenses. The Second Circuit held that a § 1983 cause of action is ready to be heard when "absent the alleged denial of due process, there is either a certainty or a very strong likelihood that the application would have been granted." *Id.* at 85, *quoting Yale Auto Parts, Inc.* v. *Johnson*, 758 F.2d 54, 59 (2d Cir. 1985).

—In the very Ninth Circuit case on which the Court of Appeals here relied as authority, the Ninth Circuit did say in dictum, following an earlier case,[14] that *Williamson*'s finality requirement applies in general terms to equal protection and substantive due process claims. *Herrington* v. *County of Sonoma*, 834 F.2d 1488, 1494 (9th Cir. 1987). But the Ninth Circuit's opinion then went on to *hold* that finality is defined differently in non-"taking" cases—and in particular that in non-"taking" cases finality and ripeness do not require any application

---

[14] *Kinzli* v. *City of Santa Cruz*, 818 F.2d 1454 (9th Cir.), *amended*, 830 F.2d 968 (9th Cir. 1987), *cert. denied*, 108 S.Ct. 775 (1988).

to anyone for further consideration after a denial. 834 F.2d at 1497. Holding the equal protection and due process claims "ripe for adjudication," *id.* at 1499, the Ninth Circuit explained, in an analysis irreconcilable with the Seventh Circuit's here:

> "Indeed, the [Supreme] Court expressly stated that the plaintiff's substantive due process, procedural due process, and equal protection claims were not at issue. *Williamson*, 473 U.S. at 182 n.4, 105 S. Ct. at 3114 n.4.
>
> "*Williamson* also holds that a *taking* claim in federal court is not ripe until the plaintiff has sought 'just compensation' from state entities. *Williamson*, 473 U.S. at 194-97, 105 S. Ct. at 3121-22. This requirement does not apply to the due process and equal protection claims at issue here." 834 F.2d at 1499 nn.9, 10 (emphasis in original).

It concluded, exactly contrary to the Seventh Circuit here, that

> "Because the Herringtons' claims are not premised on such an assertion [that all use of property had been denied], *Williamson does not require us to apply the identical ripeness standard for takings to the Herringtons' substantive due process, procedural due process and equal protection claims.*" 834 F.2d at 1499 (emphasis supplied; footnote omitted).

The Ninth Circuit emphasized that "[t]aking claims and substantive due process claims are not fungible." *Id.* at 1498 n.7.

Also contrary to the Seventh Circuit here, the Ninth Circuit separately expressed doubt that *Williamson* would apply at all to a § 1983 claim for denial of procedural due process, observing that "it is not clear that the Herringtons should be required to wait until a 'final decision' about their land has been made before challenging the decision-making process." *Id.* at 1495.

II. THE SEVENTH CIRCUIT'S RESTRICTION ON CIVIL RIGHTS ACT SUITS IS IN CONFLICT WITH DECISIONS OF THIS COURT.

A. The Seventh Circuit Has Created a New Exhaustion Requirement That Disregards *Felder* v. *Casey* and *Patsy* v. *Board of Regents*.

The Seventh Circuit's holding at best confuses and at worst undermines the application of federal civil rights protection under 42 U.S.C. § 1983.

In *Patsy* v. *Board of Regents*, 457 U.S. 496 (1982), and *McNeese* v. *Board of Educ.*, 373 U.S. 668 (1963), this Court held that exhaustion of state remedies is *not* a prerequisite to actions for denials of equal protection or due process under § 1983. Just this past Term this Court, citing *Patsy*, reiterated "the dominant characteristic of civil rights actions: *they belong in court.*" *Felder* v. *Casey*, 108 S. Ct. 2302, 2312 (1988), *quoting* (with emphasis added by this Court) *Burnett* v. *Grattan*, 468 U.S. 42, 50 (1984).

Here the Seventh Circuit, although using the vocabulary of "finality" and eschewing the word "exhaustion," clearly threw this § 1983 plaintiff out of court for failure to exhaust what the Court of Appeals hypothesized might be additional remedies. The District Court, as well as the jury, had found on ample evidence that proper application had been made and would have been granted except that there had been "a refusal by Grayslake," A. 84a, and that consequently petitioner had suffered "denial of sewer hook-up," A. 93a, which one of respondents described as petitioner's "predicament," T. 611. The Court of Appeals itself acknowledged, as the District Court had found, that the connection had initially been "approved," A. 6a, 46a, by the responsible County officials, but then denied solely because of what the Court of Appeals called "Grayslake's rebuff," A. 6a, one of the "series of wrongful acts" that petitioner alleged violated his federally protected rights. A. 43a. The record could scarcely be clearer.

The Court of Appeals decided that petitioner should in addition have personally sought an audience with the Grayslake Board, which the District Court found had already considered and declined to consent, and asked them to reconsider. A. 12a. But their exercise of arbitrary, standardless power was exactly one of the due process and equal protection violations at issue; petitioner's claim was ripe as soon as they took over to block him. Last Term in *Felder* v. *Casey, supra*, this Court held:

> "Given the evil at which the federal civil rights legislation was aimed, there is simply no reason to suppose that Congress . . . contemplated that those who sought to vindicate their federal rights . . . could be required to seek redress in the first instance from the very state officials whose hostility to those rights precipitated their injuries." 108 S. Ct. at 2311.

The Seventh Circuit's holding totally undercuts that case and *Patsy*. It contradicts this Court's holdings that § 1983 does not "force[] injured persons to seek satisfaction from those alleged to have caused the injury in the first place." *Felder* v. *Casey, supra*, 108 S. Ct. at 2312. Indeed, even in "taking" cases, "[a] property owner is of course not required to resort to . . . unfair procedures in order to obtain this determination." *MacDonald, Sommer & Frates* v. *County of Yolo*, 477 U.S. 340, 350 n.7 (1986).[15] This is particularly so when, as here, respond-

---

[15] *Accord, e.g., Logan* v. *Zimmerman Brush Co.*, 455 U.S. 422, 436 (1982); *Glover* v. *St. Louis-San Francisco Ry.*, 393 U.S. 324, 330-31 (1969); *Houghton* v. *Shafer*, 392 U.S. 639, 640 (1968); *King* v. *Smith*, 392 U.S. 309, 312 n.4 (1968). See also *First English Evangelical Lutheran Church, supra*, 107 S. Ct. at 2399 (Stevens, J., dissenting):

> "In my opinion, it is the Due Process Clause rather than that [taking] doctrine that protects the property owner from improperly motivated, unfairly conducted, or unnecessarily protracted governmental decisionmaking. Violations of the procedural safeguards mandated by the Due Process Clause will give rise to actions for damages under 42 U.S.C. § 1983 . . . ."

ents themselves conceded that such efforts would have been futile.[16] Invoking finality, the Seventh Circuit here really imposed a new kind of exhaustion requirement, demanding exhaustion even of state remedies that do not exist.

B. *Williamson* and Later Decisions of This Court Specifically Distinguish "Takings" From Other § 1983 Claims.

The Seventh Circuit assumed that all the *Williamson* requirements applied because "[a]lthough the plaintiffs' suit is not premised on a takings claim," nevertheless "the ripeness analysis used in those [taking] cases applies as well to equal protection and due process claims." A. 9a. This Court has rejected that assumption. In fact, last year in *Nollan* v. *California Coastal Comm'n*, 107 S. Ct. 3141, 3147 n.3 (1987), referring to "taking" cases, this Court specifically admonished:

> "our opinions do not establish that these standards are the same as those applied to due process or equal-protection claims. To the contrary, our verbal formulations in the takings field have generally been quite different."

In *Williamson* itself, this Court twice took pains specifically to differentiate its "taking" holding from cases like this one involving § 1983 claims based on equal protection and due process, observing that "[t]hose issues are not before us," 473 U.S. at 182 n.4, and adding that the measure of damages might well be different "if respondent's cause of action were viewed as stating a claim under the Due Process Clause," *id.* at 183 n.6. The ripeness requirements for "taking," this Court explained, were a special situation "compelled by the very nature of the inquiry required by the Just Compensation Clause,"

---

[16] Asked whether the Board would have changed its mind, one of the respondents testified, "I'm not suggesting it, no." T. 1343. Another, when asked if any document "remotely suggests" such a possibility, testified, "Not to my knowledge." T. 1484.

which includes "factors [that] simply cannot be evaluated until the administrative agency has arrived at a final, definitive position;" until then, in a "taking" case, there is no way to evaluate or know "whether respondent 'will be unable to derive economic benefit' from the land." *Id.* at 190-91.[17] And as this Court also recognized in *Williamson*, but the Seventh Circuit here did not, when "the initial decisionmaker has arrived at a definitive position on the issue that inflicts an actual, concrete injury," then finality is satisfied, and *Patsy* bars any further exhaustion requirement. *Id.* at 193.

This Court later summarized *Williamson* as a situation in which "factual disputes yet to be resolved by state authorities might still lead to the conclusion that no taking had occurred." *First English Evangelical Lutheran Church* v. *County of Los Angeles*, 107 S.Ct. 2378, 2383 (1987); *accord*, *id.* at 2395 (Stevens, J., dissenting). And in *Pennell* v. *City of San Jose*, 108 S.Ct. 849, 859 (1988), this Court last Term again distinguished between a "taking" claim, which it held was premature, and equal protection and due process claims, which it held were not and should be decided on the merits.[18]

A "taking" case, in other words, is not ripe until a taking has been completed. But equal protection and due process violations are different. Such "§ 1983 claims are

---

[17] In *Williamson* this Court did note that when a substantive due process claim essentially duplicated a "taking" claim, by alleging that "it has the same effect as a taking," the "taking" rule should apply. See 473 U.S. at 199-200. But such is not the case here. The acts complained of include a variety of tortious actions, over four years, not just the initial refusal to approve by Grayslake. Moreover, they encompass equal protection and procedural due process violations as well.

[18] *Cf.* also *Carey* v. *Piphus*, 435 U.S. 247, 264-65 (1978): "the elements and prerequisites for recovery of damages appropriate to compensate injuries caused by the deprivation of one constitutional right are not necessarily appropriate to compensate injuries caused by the deprivation of another."

best characterized as personal injury actions." *Wilson* v. *Garcia*, 471 U.S. 261, 280 (1985). "We have repeatedly noted that 42 U.S.C. § 1983 creates 'a species of tort liability' . . . . [W]hen § 1983 plaintiffs seek damages for violations of constitutional rights, the level of damages is ordinarily determined according to principles derived from the common law of torts." *Memphis Community School Dist.* v. *Stachura*, 477 U.S. 299, 305-06 (1986) (footnote omitted) (§ 1983 suit for suspension even though plaintiff was reinstated), *quoting in part Carey* v. *Piphus*, 435 U.S. 247, 253 (1978), and *Imbler* v. *Pachtman*, 424 U.S. 309, 417 (1976). Tort claims ripen when damage is inflicted. They are not "takings," which must run their full course to be measured, and even to be certain that they have occurred.

III. THE SEVENTH CIRCUIT'S RESTRICTION ON SHERMAN ACT SUITS HAS SWEEPING IMPLICATIONS, AND CONFLICTS WITH MANY HOLDINGS OF THIS COURT AND THE COURTS OF APPEALS.

The Seventh Circuit's holding that without a final and formal administrative ruling there can be no Sherman Act claim ignores the purpose of that Act and squarely conflicts with this Court's subsequent decision last Term in *Patrick* v. *Burget*, 108 S. Ct. 1658 (1988). There a physician claimed that a hospital peer-review process violated the Sherman Act. The process was not completed before his antitrust suit was filed, and in fact was never completed:

> "Before the committee rendered its decision, petitioner resigned from the hospital staff rather than risk termination.
>
> "During the course of the hospital peer-review proceedings, petitioner filed this lawsuit . . . . Petitioner alleged that the partners of the Astoria Clinic had violated §§ 1 and 2 of the Sherman Act . . . ." 108 S. Ct. at 1661.

If the Sherman Act claim of the physician plaintiff, who did not complete the review process, was ripe for adjudication in *Patrick* v. *Burget*, then certainly petitioner's claim was here. The two cases are simply not reconcilable on the point, and the Seventh Circuit's ruling should either be granted review on certiorari, or vacated and remanded for reconsideration in light of the subsequent decision in *Patrick* v. *Burget*.[19]

The casual brushing off of the Sherman Act issue by the Seventh Circuit here on "ripeness" grounds is also a far-reaching precedent in conflict with the law as applied for decades in the other courts of appeals. To list only a few recent examples:

—The Ninth Circuit has held, along with many other courts, that "the Sherman Act punishes the mere act of conspiring." *United States* v. *Miller*, 771 F.2d 1219, 1226 (9th Cir. 1985).

—The Eighth Circuit has recently held that "a Sherman Act conspiracy is technically ripe when the agreement to restrain competition is formed," and "it remains actionable until its purpose has been achieved or abandoned." *United States* v. *Northern Improvement Co.*, 814 F.2d 540, 542 (8th Cir.), *cert. denied*, 108 S.Ct. 141 (1987), *quoting in part United States* v. *Inryco*, 642 F.2d 290, 293 (9th Cir. 1981), *cert. dismissed*, 454 U.S. 1167 (1982).[20]

—In *Oberndorf* v. *City and County of Denver*, 653 F. Supp. 304, 311 (D. Colo. 1986), also a land-use suit

---

[19] If this Court does vacate and remand, the Court of Appeals should also be directed to reconsider its *Williamson* interpretation in light of the later holdings in *Nollan*, *First English Evangelical Lutheran Church*, and *Pennell* v. *City of San Jose*. See pp. 24-25, *supra*.

[20] Similarly, once the Sherman Act conspiracy is formed, "voluntary cessation of allegedly illegal conduct does not deprive the tribunal of power to hear and determine the case, *i.e.*, does not make the case moot." *United States* v. *W. T. Grant Co.*, 345 U.S. 629, 632 (1953).

against municipal officials under the Sherman Act, the same reasoning accepted by the Seventh Circuit here was expressly rejected, the court concluding that "these claims are ripe."

The Court of Appeals' dangerous reinterpretation of the Sherman Act in the name of Article III is contrary to all reasoned authority.[21] Moreover, if followed it presumably would place many conspiracies in restraint of trade beyond prosecution under the criminal penalties of the Sherman Act as well. Such a constitutional holding limiting the reach of the country's basic antitrust law is a reason, standing alone, sufficient for grant of certiorari in this case.

IV. THE ISSUES ARE IMPORTANT.

The distortion of ripeness doctrine here reflects a fundamental misunderstanding of Article III, with wide ramifications across the board of federal jurisdiction. More particularly, in the way it applies Article III to suits under the Civil Rights Act to open up housing, and under the Sherman Act against conspiracies to restrain trade, the decision invites evasion of federal fairness responsibilities if officials now can avoid suit by surrounding otherwise actionable obstructions with an unending

---

[21] The Court of Appeals cited only one case as support for its holding that a plaintiff cannot recover for damages from a § 1 Sherman Act conspiracy without exhausting the very procedures he is claiming are illegal. And even that case, the Court of Appeals acknowledged, dealt with the point "without discussion." A13a. The cited decision, *Suburban Trails, Inc.* v. *New Jersey Transit Corp.*, 800 F.2d 361 (3d Cir. 1986), really did not go even that far, holding that the case concerned a "unique circumstance" of "primary jurisdiction of UMTA" that was "intermingled with considerations of federalism," that no Sherman Act violation could occur unless the Urban Mass Transportation Act, 49 U.S.C. §§ 1601 *et seq.*, was inapplicable, and that such a determination required adherence to the administrative procedure Congress prescribed under the UMTA. 800 F.2d at 366, 367, 369.

fog of unpredictable procedural obstacles. Such evasions of § 1983 have not been permitted in other equal protection contexts. *E.g.*, *School Board* v. *Allen*, 240 F.2d 59, 63-64 (4th Cir. 1956) (Parker, C.J.), *cert. denied*, 353 U.S. 910 (1957); *McNeese* v. *Board of Educ.*, *supra*. They should not block constitutional claims here, either. *MacDonald, Sommer & Frates* v. *County of Yolo*, *supra*.

Wholly misconstruing *Williamson*, the Seventh Circuit has hobbled the practical enforcement of basic federal rights, and that calls for review by this Court.

CONCLUSION

For the reasons stated, certiorari should be granted, and the judgment vacated or the case set for argument.

Respectfully submitted,

JOHN G. KESTER *
DOUGLAS R. MARVIN
WILLIAMS & CONNOLLY
Hill Building
Washington, D.C. 20006
(202) 331-5000
Attorneys for Petitioners

Of Counsel:
JAMES P. CHAPMAN
ALAN MILLS
JAMES P. CHAPMAN AND ASSOCIATES, LTD.
Suite 930
33 North Dearborn Street
Chicago, Illinois 60602

* Counsel of Record

August 15, 1988